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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,970	06/22/2001	George Preti	MON-0292	7665

23377 7590 06/23/2004
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/887,970	Applicant(s) PRETI ET AL.	
	Examiner Neil Levy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/24/04
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 3, 7-28, 30-34, 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42, 56, 29, 35, 36, 37 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 3, 7-28, 30-34 and 38-40 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

Claims 29, 35-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained claim 29 was not amended, and simply recites "-using- composition- so it constitutes a nominal method claim, indicative of the natural intended purpose of the compositions. Claims 35-37 add an effective amount of an agent to a locus already treated with an effective amount of odor reducer-it is unclear, absent quantification, what the meets and bounds intended are; these claims are not in the alternative vis-à-vis the odor reducer and cross adapter; both are required.

Claims 1, 29, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Luca-4278047.

See col.2, top: Benzalkonium chloride is a disinfectant; both bactericidal and fungicidal-the instant effective amount of cross adapting agent, with vermiculite, odor absorber, added to animal waste.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 29, 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al 5885599 and Pierce et al.

Peterson provides methods of reducing animal-mammalian (col.3, lines 13-36) waste malodor, by applying effective amounts of odor reducing agents, inclusive of cyclodextrin (col.3, bottom) and activated charcoal (col.2, lines 56-59). Other agents include skin aids (col.5, bottom 6, top) vegetable oils. However, cross adapter were not considered. Pierce, of record, teaches odor amelioration utilizing the instant cross adapting agent, esters of hexenoic acids.

Pierce specifically show cross adaptation to ameliorate human sweat smell (discussion, p.408).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an odor controlling means to reduce body waste odors, to use Peterson's methods modified by Pierce's added arose adapting hexenoic acid esters. Such modification is shown as desirable by Pierce is order to accommodate body sweat, odors, underarm sweat, as a component of deodorant products (p.410, last paragraph).

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the amount of each ingredient to optimize the effect desired odor reduction and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

Applicant's arguments filed 2/ 4/04 have been fully considered but they are not persuasive. Applicants arguments, to extent non-persuasive, have resulted in retained rejection; but to extent persuasive, reconsideration and review poses new rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday through Friday from 7a.m to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

Levy/tgd

June, 18 2004

NEIL S. LEVY
PRIMARY EXAMINER